

(2024) 12 SHI CK 0020
High Court Of Himachal Pradesh
Case No: CWP No.2554 Of 2024

Union Of India & Ors

APPELLANT

Vs

JC 578067 Ex Nb Sub Amar
Chand

RESPONDENT

Date of Decision: Dec. 10, 2024

Acts Referred:

- Constitution of India, 1950 - Article 14

Hon'ble Judges: Tarlok Singh Chauhan, ACJ; Bipin Chander Negi, J

Bench: Division Bench

Advocate: Balram Sharma, Vijender Katoch

Final Decision: Dismissed

Judgement

Bipin Chander Negi, J (oral).

1. The present petition has been filed seeking the following substantive relief:-

i. "That the impugned judgment dated 10.04.2019 passed by the learned Armed Forces Tribunal, Chandigarh Circuit Bench at Chandigarh in case OA

No.74/2019, titled as JC-578067 Ex Sub Amar Chand Vs. UOI & Ors. may kindly be modified to the extent that arrears granted by the Ld. Tribunal may kindly

be restricted only three years before the date of Original Application."

2. Admitted facts, in the case at hand, are that the respondent had been enrolled in the Army with effect from 13.10.1969. The respondent was

discharged from service on 31.10.1995. The discharge was on account of the respondent being declared a low medical category CEE (Permtt). At the

time of discharge, the respondent was in the rank of Naib Subedar and had rendered 26 years and 19 days of service.

3. The Government of India, Ministry of Defence had issued a Circular No.1(2)/97/D(Pen-C) dated 31.01.2001 whereby rounding of benefits of disability element had been provided for. Benefits granted by virtue of the aforesaid Circular were made available to Armed Forces Personnel who were invalidated out of service.

4. Despite having been discharged from service on account of having been declared a low medical category benefits of the aforesaid circular @ 75% against 50% w.e.f. 01/01/1996 were not extended to the respondent. As a consequence, the respondent had filed OA bearing No.2168 of 2017 before the Armed Forces Tribunal Bench at Chandigarh for grant of benefits in terms of Circular dated 31.01.2001.

5. Vide order dated 19.09.2017, the Armed Forces Tribunal disposed of the aforesaid OA filed by the respondent by directing the present petitioners to decide the representation dated 16.03.2017 made by the present respondent. The said representation was to be decided, in accordance with the Policy of the Government and judgments on the subject.

6. The aforesaid representation of the respondent was decided vide a speaking order dated 16.08.2018. While disposing of the representation filed by the respondent the authority concerned had taken into consideration the judgment dated 10.12.2014 passed by the Apex Court in Civil Appeal No.418/2012, titled Union of India and Ors. Versus Ram Avtar. In pursuance to the aforesaid judgment, benefits of Circular dated 31.01.2001 were extended to the respondent. However, in terms of the judgment passed by the Honâ€™ble Supreme Court, reported as 2008 (8) SCC 648, titled Union of India & Ors. Versus Tarsem Singh. the benefits of arrears were only limited to three years prior to filing of the petition.

7. Feeling aggrieved by the aforesaid speaking order dated 16.08.2018, the present respondent had preferred an Original Application bearing No.74/2019 before the Armed Forces Tribunal Bench at Chandigarh. It was contended before the Tribunal that the respondent herein is entitled to benefits in terms of judgment passed by the Apex Court in Civil Appeal No.418/2012, titled Union of India & Ors. Versus Ram Avtar, decided on 10.12.2014.

8. The aforesaid legal position was not disputed by the present petitioners, as a consequence whereof, the petition filed by the respondent was allowed and the decision on the representation dated 16.08.2018 was set aside and the benefits in terms of Circular dated 31.01.2001 were extended to the respondent @ 50% w.e.f. 01.01.1996 to 06.04.2000 and @ 75% w.e.f. 07.04.2000 for life.

9. In the aforesaid backdrop the sole contention raised on behalf of the petitioner is that insofar as arrears payable to the present respondent are concerned, the same be limited to three years prior to filing of the claim, i.e., OA No.2168/2017 by the respondent before the Armed Forces Tribunal Bench at Chandigarh. In this regard, reliance has been placed on the decision of the Honâ€™ble Supreme Court in the Union of India & Ors. Vs. Tarsem Singh, 2008 (8) SCC 648.

10. The argument raised in the case at hand is liable to be rejected for the following reasons; (a) the subject-matter of the Circular No.1(2)/97/D(Pen-C) dated 31.01.2001 whereby rounding of benefits of disability element had been provided for touches upon a policy matter wherein an obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. (b) the judgment of the Apex Court in the case at hand (Avtar Singh) is not a judgment in personam, as neither in the judgement has it been stated expressly that the benefit of the said judgment shall accrue to the parties before the Court nor it can be impliedly found out from the tenor and language of the judgment. (c) Pension is a reward for long service rendered by the employee and not a bounty. Moreover, the judgment dated 10.12.2014 passed by the Apex Court in Civil Appeal No.418/2012, titled Union of India & Ors. Vs. Ram Avtar does not limit benefits of Circular dated 31.01.2001 to three years prior to filing of the claim/raising of claim(d) Besides in service matters, the normal rule/ principle is that when a particular set of employees is given relief by the Court, then similar benefits need to be extended to all identically situated persons. Not doing so would be violative of Article 14 of the Constitution of India.

11. The well-recognised exceptions to the aforesaid normal rule/ principle are laches and delays as well as acquiescence. However, these well-

recognised exceptions do not apply to a judgment in rem.Â Moreso, in cases when the subject-matter of the decision touches upon the policy matters

wherein an obligation is cast upon the authorities toÂ itselfÂ toÂ extendÂ theÂ benefitÂ thereofÂ toÂ allÂ similarly situated persons. In this

respect, a reference to law laid down by the Apex Court in State of U.P. v. Arvind Kumar Srivastava, (2015) 1 SCC 347 would be appropriate.

Relevant extract whereof is being reproduced herein below:-

22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by

extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be

applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons

should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they

are not to be treated differently.

22.2. However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not

challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who

had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of

similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground

to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all

similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the

benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme

of regularisation and the like (see K.C. Sharma v. Union of India 1997(6) SCC 721). On the other hand, if the judgment of the court was in personam holding

that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.â€

12. Viewed from this angle, in the present case, since the judgement in Avtar Singhs case is in rem, does not limit benefits thereof for three years prior to raising claim and the subject-matter of the decision touches upon a policy matter qua rounding of benefits of disability element hence an obligation was cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Therefore, the respondent in the case at hand who wanted to get the benefit of the Avtar Singhs judgment extended to him was not required to satisfy that his petition before the tribunal does not suffer from either laches and delays or acquiescence. For the above stated reasons monetary benefits in the case of the respondent cannot be limited to three years prior to filing of the petition before the tribunal.

13. In view of the aforesaid facts and attending circumstances, present petition is dismissed being devoid of merits and so also the pending application(s), if any.